

1 STEPHEN A. SCOTT (SBN 67467)
DARA M. TANG (SBN 231413)
2 **HAYES SCOTT BONINO ELLINGSON & McLAY, LLP**
203 Redwood Shores Parkway, Suite 480
3 Redwood City, CA 94065
Telephone: 650.637.9100
4 Facsimile: 650.637.8071

5 Attorneys for Defendant
SQUARETWO FINANCIAL COMMERCIAL FUNDING
6 CORPORATION

7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 JESUS MARTINEZ, an individual, on
behalf of himself and others similarly
11 situated

12 Plaintiff,

13 v.

14 CACH, LLC, and SQUARETWO
FINANCIAL COMMERCIAL
15 FUNDING CORPORATION,

16 Defendants.

CASE NO. 10 CV 01625 DMS MDD

**DECLARATION OF DARA M. TANG IN
SUPPORT OF DEFENDANT
SQUARETWO FINANCIAL
COMMERCIAL FUNDING
CORPORATION'S MOTION FOR
RULE 11 SANCTIONS**

Date: June 8, 2011
Time: 1:00 p.m.
Dept.: 10
Judge: Dana M. Sabraw

17
18 I, DARA M. TANG, declare as follows:

19 1. I am an attorney at law, licensed to practice before all of the courts of the State of
20 California and admitted to practice before the United States District Court, Southern District of
21 California. I am an associate attorney at Hayes, Scott, Bonino, Ellingson & McLay, counsel of
22 record for Defendant SquareTwo Financial Commercial Funding Corporation in this action.

23 2. Attached hereto as Exhibit A is a true and correct copy of a letter dated March 12,
24 2012 my office sent to Plaintiff's counsel pursuant to FRCP 11(c)(2).
25

26 ///

27 ///

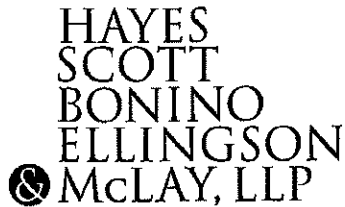
28 ///

1 I declare under penalty of perjury under the laws of the State of California that the foregoing
2 is true and correct. If called as a witness, I could and would so testify.

3 Executed this 5th day of April, 2012 at Redwood City, California.

4
5 
6 DARA M. TANG
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A



ATTORNEYS AT LAW

203 Redwood Shores Parkway, Suite 480
Redwood City, CA 94065
Telephone: 650.637.9100
Facsimile: 650.637.8071
www.hayesscott.com

March 12, 2012

VIA HAND DELIVERY

Mr. Stephen G. Recordon, Esq.
RECORDON & RECORDON
225 Broadway, Suite 1900
San Diego, CA 92101

Mr. Clinton Rooney, Esq.
ROONEY & LICKEL
1102 Cesar E. Chavez
San Diego, CA 92113

Mr. Mathew B. Butler, Esq.
NICHOLAS & BUTLER, LLP
225 Broadway, 19th Floor
San Diego, CA 92101

Re: Jesus Martinez v. CACH, LLC and SquareTwo Financial Commercial Funding Corporation; Civil Action No. 10 CV 01625 DMS JMA in the United States District Court for the Southern District of California

Gentlemen:

This firm represents SquareTwo Financial Commercial Funding Corporation in the above-referenced matter. Enclosed please find my client's Original Answer to Plaintiff's Second Amended Complaint together with the Motion for Rule 11 Sanctions that we will be filing.

When you failed to serve the complaint for almost a year, my client hoped that you had recognized the frivolous and groundless nature of the claims asserted against it and that you had chosen to abandon those claims. When it became apparent last week that the failure to serve was a result of your negligence and not an abandonment of those claims our firm was retained. Your decision to pursue those meritless claims has caused my client to incur fees to answer and prepare the attached documents.

It is my understanding that depositions are currently set in this case for March 15 and 28. Out of respect for the Court's scheduling order we have rushed the preparation of the answer and Rule 11 motion, and one of our attorneys will attend each of the depositions. However, I want to be clear about two points:

Re: *Jesus Martinez v. CACH, LLC and SquareTwo Financial Commercial Funding Corp.*
March 12, 2012

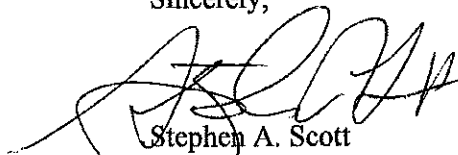
Page 2

1. SquareTwo Financial Commercial Funding Corporation intends to pursue its claim for fees against Mr. Martinez; and
2. it also intends to pursue an award of fees against you and your firms.

An immediate dismissal of the claims against our client will mitigate its damages and limit its claim against you and your client. I sincerely hope that you will choose to effectuate such a dismissal rather than cause our client's damages to increase.

Thank you for your attention to this matter.

Sincerely,



Stephen A. Scott
Dara M. Tang

SAS:ac
Enclosures

1 STEPHEN A. SCOTT (SBN 67467)
DARA M. TANG (SBN 231413)
2 **HAYES SCOTT BONINO ELLINGSON & McLAY, LLP**
203 Redwood Shores Parkway, Suite 480
3 Redwood City, CA 94065
Telephone: 650.637.9100
4 Facsimile: 650.637.8071

5 Attorneys for Defendant
SQUARETWO FINANCIAL COMMERCIAL FUNDING
6 CORPORATION

7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
9

10 JESUS MARTINEZ, an individual, on
11 behalf of himself and others similarly
situated

12 Plaintiff,

13 v.

14 CACH, LLC, and SQUARETWO
FINANCIAL COMMERCIAL
15 FUNDING CORPORATION,

16 Defendants.

CASE NO: 10 CV 01625 DMS MDD
**DEFENDANT SQUARETWO
FINANCIAL COMMERCIAL
FUNDING CORPORATION'S MOTION
FOR RULE 11 SANCTIONS**

The Honorable Dana M. Sabraw
Courtroom: 10

17 Defendant SquareTwo Financial Commercial Funding Corporation ("Movant") moves the
18 Court to impose sanctions against Plaintiff/ attorneys pursuant to Fed. R. Civ. P. 11, and in support
19 of such motion would respectively show unto this Court the following:
20

21 1. Fed. R. Civ. P. 11 provides, in pertinent part:

22 (b) Representations to the Court. By presenting to the court a pleading,
written motion, or other paper--whether by signing, filing, submitting, or later
23 advocating it--an attorney or unrepresented party certifies that to the best of
the person's knowledge, information, and belief, formed after an inquiry
24 reasonable under the circumstances:

25 (1) it is not being presented for any improper purpose, such as to
harass, cause unnecessary delay, or needlessly increase the cost of litigation;

26 (2) the claims, defenses, and other legal contentions are warranted by
existing law or by a nonfrivolous argument for extending, modifying, or
reversing existing law or for establishing new law;

27 (3) the factual contentions have evidentiary support or, if specifically
so identified, will likely have evidentiary support after a reasonable
28 opportunity for further investigation or discovery; and

1 * * *

2 2. Plaintiff has sued Movant under state and federal law alleging, *inter ali*, that Movant
3 was engaged in the fraudulent transfer of the assets of Co-Defendant CACH, LLC. There is no basis
4 in fact or law for the allegations against Movant.

5 3. Plaintiff has alleged in Paragraph 13 of the Second Amended Complaint that Movant
6 is in the business of collecting consumer debts. There is no basis in fact or law for such allegation.

7 4. Plaintiff has alleged in Paragraph 14 of the Second Amended Complaint that Movant
8 is regularly collects consumer debts. There is no basis in fact or law for such allegation.

9 5. Paragraph 30 of Plaintiff's Second Amended Complaint states:

10 For the purpose of avoiding liability for CACH's unlawful conduct CACH
11 fraudulently transferred assets to their (sic) parent corporation,
12 SQUARETWO.¹

13 6. There is no basis in fact or law for such allegations.

14 7. Plaintiff has alleged in Paragraph 35 of the Second Amended Complaint that
15 "Defendants" conduct has imposed a common injury on the members of Class One and Class Two."
16 Certainly, with regard to Movant, there is no basis in fact or law for such allegation.

17 8. Plaintiff has alleged in Paragraph 36 of the Second Amended Complaint that
18 "Defendants have acted, and refused to act, on ground generally applicable to Class One and Class
19 Two, which makes final injunctive relief with respect to each claim as a whole appropriate. At least
20 with regard to Movant there is no basis in fact or law for such allegation.

21 9. Paragraph 60 of Plaintiff's Second Amended Complaint states:

22 Defendant SQUARETWO caused Defendant CACH to transfer assets from
23 CACH to SQUARETWO while holding all liabilities related to such assets in
24 order to avoid CACH from demonstrating a "net worth" for the purposes
25 avoiding liability for violations of the FDCPA or Rosenthal Act or both as
26 alleged by Plaintiff in this class action lawsuit or any other litigant with
27 similar claims as Plaintiff, or both.

28 ¹ Paragraph 11 of the Second Amended Complaint defines "SQUARETWO" as referring to Movant

- 1 10. There is no basis in fact or law for such allegations.
- 2 11. Paragraph 61 of Plaintiff's Second Amended Complaint states:
3 CACH transferred, and continues to transfer, all assets to its parent
4 SQUARETWO. SQUARETWO assigns liabilities of SQUARETWO to
5 CACH so that CACH's net worth is zero or less. CACH does this to avoid
6 liabilities, including but not limited to liability under consumer protection
7 statutes such as the FDCPA and the Rosenthal Act.
- 8 12. There is no basis in fact or law for such allegations.
- 9 13. Paragraph 66 of Plaintiff's Second Amended Complaint states:
10 Each of the above transfers is evidenced by exhibit "C" attached hereto. Transfers
11 such as these were done by Defendants with the intent to hinder, delay or defraud
12 Plaintiff and the members of the proposed classes in this action, and other creditors,
13 of its (sic) obligations owed to them. Defendants attempted to conceal or remove
14 assets from CACH's ledgers so that it could be "judgment proof" or otherwise not
15 liable for damages and other relief in an action such as the instant action by Plaintiff.
- 16 14. There is no basis in fact or law for such allegations.
- 17 15. Paragraph 70 of Plaintiff's Second Amended Complaint states:
18 Defendant SQUARETWO caused Defendant CACH to transfer assets from CACH
19 to SQUARETWO while holding all liabilities related to such assets in order to avoid
20 CACH from demonstrating a "net worth" for the purposes avoiding liability for
21 violations of the FDCPA or Rosenthal Act or both as alleged by Plaintiff in this class
22 action lawsuit or any other litigant with similar claims as Plaintiff, or both. Plaintiff,
23 on behalf of himself and the members of the proposed classes have a right to
24 payment of damages and other relief sought in this action for the illegal acts of
25 Defendants.
- 26 16. There is no basis in fact or law for such allegations.
- 27 17. Paragraph 71 of Plaintiff's Second Amended Complaint states:
28 CACH transferred, and continues to transfer, all assets to its parent SQUARETWO.
SQUARETWO assigns liabilities of SQUARETWO to CACH so that CACH's net
worth is zero or less. CACH does this to avoid liabilities, including but not limited to
liability under consumer protection statutes such as the FDCPA and the Rosenthal
Act.
18. There is no basis in fact or law for such allegations.
19. Paragraph 76 of Plaintiff's Second Amended Complaint states:
Each of the above transfers is evidenced by exhibit "C" attached hereto. Transfers
such as these were done by Defendants with the intent to hinder, delay or defraud
Plaintiff and the members of the proposed classes in this action, and other creditors,

of its obligations owed to them. Defendants attempted to conceal or remove assets from CACH's ledgers so that it could be "judgment proof" or otherwise not liable for damages and other relief in an action such as the instant action by Plaintiff. Furthermore, CACH does not receive reasonably equivalent value of assets transferred to parent SQUARETWO for the liabilities CACH has incurred in exchange for such transfer of assets.

20. There is no basis in fact or law for such allegations.

21. Paragraph 77 of Plaintiff's Second Amended Complaint states:

As a result, Plaintiff and the members of Class One and Class Two were harmed by Defendants actions, Plaintiff, on behalf of himself and the members of Class One and Class Two seeks an avoidance of or an order setting aside such fraudulent transfers in an amount to be proven at trial, attachment or other provisional remedies, execution and for the court to enjoin the Defendants from further transfers, and all other remedies available under the law.

22. There is no basis in fact or law for such allegations.

23. Paragraph 78 of Plaintiff's Second Amended Complaint states:

Based on information and belief, Defendant CACH and SQUARETWO in (sic) a similar or functionally reciprocal business of debt collection as defined by the Federal Debt Collection Practices Act. The nature of this relationship results in CACH being nothing more than an instrument and/or conduit of SQUARETWO in the pursuit of the single business venture and/or enterprise of debt collection.

24. There is no basis in fact or law for such allegations.

25. Paragraph 79 of Plaintiff's Second Amended Complaint states:

Based on information and belief, CACH and SQUARETWO share common directors, officers, and employees; and jointly benefit from transactions entered into by one.

26. There is no basis in fact or law for such allegations.

27. Paragraph 80 of Plaintiff's Second Amended Complaint states:

Based on information and belief, SQUARETWO posses dominate (sic) control over defendant CACH's finances, policies, and business practices so that SQUARETWO and CACH may avoid liability and perpetrate a fraud.

28. There is no basis in fact or law for such allegations.

29. Paragraph 81 of Plaintiff's Second Amended Complaint states:

Defendants established this corporate relationship to perpetrate a fraud, to avoid liability, and to avoid the effect of the Federal Debt Collection Practices Act.

1 30. There is no basis in fact or law for such allegations.

2 31. The prayer to Plaintiff's Second Amended Complaint requests relief against Movant.

3 32. There is no basis in fact or law for such request.

4 33. Plaintiffs' counsel of record have violated FED. R. CIV. P. 11 by making each of the
5 aforesaid allegations. They have sued Movant without any basis in fact or law and without any
6 good faith argument for the extension, modification, or reversal of existing law.

7 34. Movant requests that the Court make a specific finding that Plaintiff's counsel have
8 violated Rule 11, and that the Court impose against Plaintiff's counsel the maximum sanctions
9 permitted by Rule 11 including, without limitation, an order that they pay all of Movant's fees and
10 costs incurred in defending this action.

11 35. Movant requests that the Court make a specific finding that the violation of Rule 11
12 was an intentional and malicious injury.

13 WHEREFORE, PREMISES CONSIDERED, Movant prays that the Court impose
14 sanctions against Plaintiff's attorneys and award to Movant all of the fees and costs incurred in
15 defending this frivolous suit against it.

16 Dated: March 12, 2012

HAYES SCOTT BONINO ELLINGSON & MCLAY, LLP

17

18

By: 

19

STEPHEN A. SCOTT

20

DARA M. TANG

21

Attorneys for Defendant

22

SQUARETWO FINANCIAL COMMERCIAL
FUNDING CORPORATION

23

24

25

26

27

28